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# Appeal Decision

Hearing held on 21 June 2016

Site visit made on 21 June 2016

**by Roy Merrett BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 August 2016**

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**Appeal Ref: APP/H3510/W/16/3144192**

**Small Fen Farm, Small Fen Lane, Chalk Road, Brandon, Suffolk IP27 0SD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs D Usher against the decision of Forest Heath District Council.
  - The application Ref DC/14/1711/FUL, dated 11 September 2014, was refused by notice dated 3 September 2015.
  - The development proposed is temporary permission to occupy the building for a period of up to 5 years (subject to an occupancy condition).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. At the Hearing I explained that the appellants had submitted various letters containing sensitive and confidential information relating to the health of Mrs. Ellen Usher. The information had been seen by the Council. Whilst the issues arising had been summarised in various documents submitted by the main parties it would be normal for all information in relation to the appeal to be placed in the public domain to avoid the risk of any parties being prejudiced. However noting the request for information to remain confidential, I asked third parties whether they were content for me to deal with this confidential information and come to my own judgement. One of the third parties, Mrs. Ormrod queried whether the confidential information had been prepared by a company. I confirmed this was not the case, and that the submissions were the expert opinions of medical health care professionals. No objection was raised to me dealing with the confidential information as I had suggested.
  3. The submissions in question are dated 9 June 2014, 11 June 2014 and 9 September 2014.
  4. A letter was submitted at the Hearing and circulated to all parties for consideration. This letter was from a family relative of the appellants and related to the personal circumstances of Mrs. Ellen Usher.
  5. From here on in and ease of reference I have referred to the appellant, Mrs Ann Usher as 'AU' and Mrs Ellen Usher as 'EU'.
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## **Main Issues**

6. The main issues are i) the effect of the dwelling on the character and appearance of the surrounding area, ii) the significance of emerging policy in relation to the appeal site and iii) the significance of the appellants' personal circumstances.

## **Reasons**

### *Character and Appearance*

7. The setting of the appeal site is one of open grassed fields and paddocks with mature woodland beyond. The appeal site itself is located close to but to the north of the settlement boundary and away from the main and continuous built up area of Brandon. It is enclosed by tall timber boundary fencing with the dwelling limited to single storey height. However the building elevations and in particular the mass of the expansive and steeply sloping pitched roof are prominent in views from Manor Road to the south and from public rights of way to the north and south.
8. I agree with the Inspector who dealt with the previous enforcement appeals at this site<sup>1</sup> that this is not the most remote of locations. Furthermore I acknowledge the presence of various other structures in the locality including the adjacent dwelling at West End House, electricity poles and cables, and various paraphernalia associated with aspects of rural enterprise. Notwithstanding this the building is bulkier and more visible in comparison to these structures and appears as a prominent imposition in the landscape, obtrusive and uncharacteristic within its generally open surroundings. From the bridleway to the north-west of the site, I noted that the scale, functional appearance and sharp outline of the dwelling appear at odds with the ornate tower of Brandon Church in the background. The dwelling appears incompatible with its surrounding environment and gives the sense of being visually isolated. It is therefore harmful to the character and appearance of the surrounding area.
9. For the above reasons the proposal would be in conflict with Policies DM2, DM5 and DM27 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 (DMPD) and with the National Planning Policy Framework (the Framework) which seek to strictly control development in the countryside, avoid the development of isolated dwellings unless there are special circumstances, promote good design and protect local character and distinctiveness.
10. During the site visit the appellants' agent made the point that seen from Manor Road the dwelling could be regarded as a typical equestrian-type building. Whether or not this is the case would not justify the harm I have identified. In any event, its use as a dwelling must be considered in the context of the policies concerning new dwellings in the countryside and from the main parties' statements there is common ground that the proposal would conflict with Policies DM5 and DM27 of the DMPD in this regard.

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<sup>1</sup> Appeal Refs: APP/H3510/C/12/2190062 & 2190063 and APP/H3510/C/12/2190065 & 2190066.

### *Emerging Policy*

11. The Council confirmed at the Hearing that it is about to consult on preferred options in relation to its emerging Site Allocations Local Plan. Whilst there is some growth planned for Brandon, this is very limited in scale and involves sites that are relatively far removed from the appeal site location. The Council confirmed that a more extensive housing allocation had previously been considered to the north of Brandon within the area surrounding the appeal site. However, this has now fallen away due to the existence of environmental constraints which are expected to be very difficult to overcome.
12. The appellants, whilst acknowledging this position referred to a major planning application coinciding with this area which is currently in abeyance pending a solution to the aforementioned environmental constraints. In their view, development within the surrounding area would significantly alter the landscape context in favour of the proposal. In addition the fact that the Council had not simply refused the application suggested, in their view, that a solution was achievable. In the Council's view, however, the steps required to provide the necessary mitigation to deal satisfactorily with the environmental constraints were unlikely to be achieved in the near future.
13. In the absence of any evidence to the contrary and from the information before me, I conclude it is unlikely that this area to the north of the village will be brought forward for development in the near future. Accordingly I attach very little weight to the emerging policy position in terms of supporting the proposal.

### *Personal Circumstances*

14. The appellants' case is largely based on the personal circumstances of EU, their mother and mother-in-law respectively who is 82 years of age and lives at the dwelling and is cared for by them.
15. From the representations made by AU at the Hearing and from the expert medical opinion I have seen, the physical and mental health of EU is in an advanced state of decline which has resulted in her being regarded as highly vulnerable. In essence, if removed from the home care environment with which she is familiar, EU is said to be more at risk of disorientation and falls. Furthermore in the company of strangers she is likely to become very distressed and prone to violent and aggressive behaviour which may result in harm to herself and others.
16. The Council, with sensitivity, did express concern that the medical evidence provided was not recent and that this should detract from the weight afforded to it. In response to this AU explained that the process of preparing EU for medical examination was very traumatic for her, and as such the family had been reluctant to expose EU to such procedures.
17. From the information before me I am unable to ascertain EU's precise state of health currently. However, whilst I consider the Council's concern has some merit, I have not been provided with a compelling reason to doubt the prognosis given by EU's medical consultant in September 2014 regarding maximum life expectancy (5 years); emotional instability and difficult to manage behaviours.

18. In terms of potential alternative accommodation, I have no information that would lead me to dispute that EU had no desire to return to her former bungalow following the death of her husband, and therefore the apparent motivation for the appellants' decision to sell that property. As to the timing of sale, confirmed during the Hearing to have taken place in May 2013, I can understand why this has been queried by the Council coming before the previous enforcement appeal outcome was known and therefore removing a potential alternative accommodation option in the event of the appeal being dismissed, as indeed it eventually was. However notwithstanding EU's resistance to return to that property, it seems to me to be equally arguable, in principle at least, that with the sale of the bungalow a replacement could have been purchased. The disposal of that property does not therefore in my view, strengthen the appellants' case to remain at Small Fen Farm which in any event they are not seeking to argue. Nor does it add weight to the Council's case for not granting planning permission in that the appellants have voluntarily denied themselves the possibility of alternative premises to relocate to.
19. Pulling the above strands together I have no reason to doubt the opinion expressed by AU at the Hearing that the most suitable and preferable accommodation arrangements for EU going forward would be in the presence and close care of her immediate family. This of course leaves the question as to whether the accommodation should be at Small Fen Farm or elsewhere.
20. It has been set out in evidence how following the sharp deterioration of EU's health in April 2014, she finds that dealing with the smallest changes of routine including walking between and within rooms extremely distressing. Again I have no reason to doubt this and it would therefore appear that a move to alternative accommodation would result in distress and risk of physical injury arising amongst other things from a disruption to this routine. Notwithstanding this it appears from the evidence and information before me that these potential health risks would be significantly mitigated through care and supervision from family members being undertaken at an alternative property much in line with current arrangements. Whilst I do not underestimate how difficult and challenging it might be to put such change into practice, neither have I been presented with any compelling evidence to suggest that it would be an impossible task.

#### *The Planning Balance and Human Rights*

21. In accordance with the previous Inspector I have found that the proposal would harm the character and appearance of the area. Furthermore I have no reason to dispute his finding that this harm could have reasonably been avoided. The Council has drawn my attention to the Written Ministerial Statement dating from 31 August 2015 which introduced a planning policy to make intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. In the Council's view this adds weight to the case for not granting planning permission. Whilst the appellant states that the temporary nature of the proposal significantly mitigates the effect of this policy, I nevertheless consider that the policy carries some weight in the consideration of this appeal.
22. I have taken into account the view of the previous Inspector that the harm caused by the development was not of the type that was in urgent need of

remedy to protect the living conditions of local residents but nevertheless was real and continuing. However, that decision was taken three years ago and two years have now passed since the requirements of the Enforcement Notice to demolish the dwelling should have been complied with. Despite the Inspector allowing a more generous timescale, than originally sought by the Council to comply with the Notice I am very mindful that the longer the period of non-compliance is seen to 'drift on', the more that public confidence in the planning system will become undermined. In addition, there appears to be greater certainty now than when the previous enforcement appeal decision was made that the potential major housing land allocation as part of the Council's emerging development plan, which could have mitigated the appeal proposal, will not come forward in the near future if at all. These considerations justify very significant weight being given to the removal of the dwelling sooner rather than later.

23. The Government's Planning Practice Guidance (PPG) sets out that an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building. This adds some weight to the case for dismissing the appeal but is tempered by the circumstances in this case which involve a temporary building.
24. To dismiss the appeal would result in EU losing her home or at best losing her home sooner than might be expected in the event of her outliving her life expectancy and any temporary planning permission for the dwelling expiring in the meantime. Either way this would amount to an interference with EU's home to the extent that rights under Article 1: The Peaceful Enjoyment of Property and Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998 (HRA) would be engaged.
25. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things the economic well being of the country which has been held to include the protection of the environment and upholding planning policies. Furthermore Article 1 provides that no one shall be deprived of his possessions except, subject to conditions, in the public interest.
26. In exercising my function on behalf of a public authority I am also aware of my duties under the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. It does not follow from the PSED that the appeal should succeed. However in consciously thinking about the aims of the PSED I have had due regard to the age and disability of EU. In the overall balance this together with the HRA considerations are factors that weigh significantly in favour of granting temporary planning permission.
27. Notwithstanding the mental impact from fear of being forced from her home, and the risk to physical and mental health from an unfamiliar environment, I have not been presented with a compelling reason as to why EU could not relocate to alternative accommodation subject to continuing to be looked after in the close care of her immediate family.
28. After very careful consideration, and though finely balanced, for the aforementioned reasons I conclude that the correct balance between the public interest and the private interests in the form of the difficult personal

circumstances of EU lies in favour of not allowing temporary permission and dismissing the appeal.

**Conclusion**

29. For the aforementioned reasons, and having considered all other points raised the appeal should be dismissed.

*Roy Merrett*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Richard High	Agent, High Associates
Ann Usher	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

David Beighton BA (Hons) Dip TP MRTPI	Principal Planning Officer, Forest Heath District Council
Anne-Marie Howell BA MA MRTPI	Principal Policy Officer, Forest Heath District Council
Jo Hooley	Solicitor, Forest Heath District Council

### INTERESTED PERSONS:

Eric Hunns	Local resident
Georgina Ormrod	Local resident
Robert Ashley	Local resident

## **DOCUMENTS PRESENTED AT THE HEARING**

- 1 Signed and dated Statement of Common Ground
- 2 Letter from third party, Mr. K Usher, dated 17 June 2016.